

HEGEL'S *PHILOSOPHY OF RIGHT*

THOMAS COLLETT SANDARS¹

Hegel's *Philosophy of Right* has not received the general attention and approbation which its intrinsic merits and the praises bestowed on it by a few eminent critics might have led us to expect. It is not, indeed, probable that it should be a popular work, but it might be a work known and appreciated wherever moral

¹ Thomas Collett Sandars [1825-1894], "Hegel's *Philosophy of Right*," *Oxford Essays, Contributed by Members of the University*, London, John W. Parker and Son, 1855, 213-250. Christopher Richard Wade Dettling, editor, *Hegel's Philosophy of Right*, By Thomas Collett Sandars, archive.org, 2016.

philosophy and jurisprudence are studied. We believe that no attempt has been made to familiarise the English public with its contents; and even in the country of its birth it has found as many to attack as to admire it. It forms a part of Hegel's philosophy; and Hegel's philosophy, like many other philosophies, has risen on the vast surface of German thought, and then yielded in its turn to other systems.² And not only has the *Philosophy of Right* shared a common fate with the other productions of its author, but it has encountered criticism and disapproval on grounds peculiar to itself. It has been considered to offend against that idea of liberty to which so much high-minded though fruitless devotion is paid in Germany. And it must be confessed that if we

² All influential philosophy since the time of Kant and Hegel, especially in the 20th century, is deeply rooted in German Idealism, which to this day is not surpassed in the world of ideas, especially in the arena of politics and economics: Even those thinkers who have "refuted" German Idealism (e.g., Karl Marx), use the central categories of Kant and Hegel as the basis of their so-called refutations, i.e., transcendental and critical as well as dialectical and speculative. *Where is German Idealism surpassed in the world of today? American Idealism is the culmination of Western philosophy in the Global Age.* [Editor]

are to believe that a book, honestly written by a man who strives to be true, and avoids anything like conscious exaggeration, can in the long run prove dangerous to liberty, and if a very little misapprehension and misapplication were employed to distort its contents, this work might be considered to favour existing institutions, of whatever kind, and maintained at whatever cost. Superficially speaking, it is rather hard to separate the principle on which it is based from the doctrine that “whatever is, is right.” An approach, apparent rather than real, is made towards optimism; and the end of optimism is undoubtedly tyranny.

Two lines inserted in the preface sum up succinctly the vein of thought that runs through the whole volume:—

Was vernünftig ist, das ist wirklich;
Und was wirklich ist, das ist vernünftig.³

³ *What is rational is actual, and what is actual is rational.* [Editor]

When we ask what it is that reason imposes on us as duties, prescribes as our sphere, indicates as the sources of our strength, we must look, Hegel would say, for our answer in the actual world that exists around us—not in any abstract **[214]** world of thought, or ideal world of the imagination. We are to assume as a fundamental axiom, that everything that is demanded of man, everything that the spirit which breathes through his life points out as a goal to which he should tend, is really, as a matter of fact, realised and attained in the course of his slow but unremitting progress. We cannot tell what is reasonable by any effort of pure thought; we must look to facts, and the history of man; and, conversely, we may be sure that this history has been moulded and these facts determined by an in-dwelling Reason. It is the task of philosophy to apprehend this reason, to unveil it from beneath the forms, the outward expressions, in which it clothes itself, and thus at once to explain and justify the course of human actions. Accordingly, Hegel, in this volume, after gathering from the lessons of experience what are the simplest and most elementary forms in which Right can find its external existence, and seeking

in the examination of the more obvious phenomena of human nature for a test by which the value of what is external may be ascertained, proceeds to give a lengthened and elaborate sketch of the form in which the reason of man finds its perfect realisation.

But this sketch is not the result of a logical deduction which anticipates the future from the present and the past, nor of the exercise of the fancy. It is not put forward as a sketch which would be absolutely perfect and true in every age. It only claims to be a true representation of that which the person who drew it actually beheld from the point at which he was standing. When another century has carried man a few steps higher up the hill, the philosopher of that day will see the same landscape in a different aspect, and new objects will fall within the range of his vision. What Hegel claims to effect is, the interpretation of that which existed and had existed at the time he wrote. A book, he says, is as much the child of an age as its writer. It is idle to attempt to outstrip time. And, indeed, this is but a corollary of the main position, that truth is to be learnt from the pages of historical fact.

This view of philosophical and historical truth produces some curious results. The truths that underlie history, gleaned as they are from the histories of different nations and different eras, are stated for the most part without reference to the sources from which they have been derived. They are put forward, as of course according to the hypothesis they ought to be, as the truths of reason. Their historical dress is stripped off, and they themselves remain in their simple majesty. But, on the other hand, they are [215] avowedly the basis of something actual, of something which has really happened; their sphere is limited within the range of experience. And thus we often find that a group of phenomena, familiar to our daily observation, or present to the most sluggish historical memory, has been sublimated in a most unexpected way, into an expression of the highest reason. To take the most remarkable instance. The picture given of what a State must be, according to the necessities of man's nature, and the exigencies of his position on this earth, is nothing else than a closely copied sketch of the British Constitution. England is not mentioned, or is only mentioned in the

most cursory way; but King, Lords, and Commons are there: A sovereign who is to have no power, but who shall express the highest personality, who is to pardon criminals, and sign his name when he is told; one assembly, which shall reflect what is permanent in property, and another which shall give vent to what is fluctuating in popular opinion. True that a man of much less wisdom than Hegel, casting his eye over the map of Europe within five years after the formation of the Holy Alliance, would have rested with more satisfaction on England than on any other country. And so, if actual experience was to be the test, experience may be said to have warranted Hegel in making England his model. But it is rather startling to find the minutiae of English constitutional law delivered as the dictates of the highest philosophical reason, and invested with the grandeur of eternal and indisputable truth.

In the hands of men of genius, error is always a matter of degree. Every one must allow that there is a great amount of most valuable truth in Hegel's theory of history as the expression of reason, and that a philosophy which, treating of man, dissevers thought

from experience, is not so much dangerous as a sheer waste of time. But when we ask how far can the principle of thus reading history carry us with safety; how are we to test its application; how are we to know that what we select as a step in the march of reason is a real step; that what we reject as lying without the path of reason ought really to be rejected; it must be confessed that Hegel does not give us a satisfactory answer. We are often obliged, in inquiring why he says what we find him saying, to be content with the reply, that so it is written. The wise man has said it, and the onus of disproof is on the reader. At the worst, we have the reflections of a mind comprehensive, observant, and acute; and the dogmatism of such a mind is often, perhaps, vexatious, but can never be valueless. **[216]**

It is also to be observed, that the form in which this book presents itself has given it an air of dogmatism beyond what can properly be laid to the charge of its author. The *Philosophy of Right* contains the substance of lectures delivered by Hegel as professor. After its publication it served as a compendium on which Hegel lectured in succeeding years. And he thus made many

oral additions, notes of which were taken by his pupils, and these notes were, after his death, thrown into the shape of paragraphs, annexed to the sections of the original work. The work, therefore, as we now have it, contains both the paragraphs written by the author, and also those embodying, as nearly as possible in the author's words, what he said by way of illustration or explanation.⁴ This has given it a fragmentary and incomplete character, which is detrimental to its effect,

⁴ See: "In general, the student notes written during or after Hegel's classes should be used with caution ... According to Leopold von Henning's preface (pp. vi-vii) in his edition (1839) of the *Encyclopädie* of 1830, the editors of the *Encyclopedia* sometimes changed or completed the sentences in which the students had rendered Hegel's classes." Adriaan Theodoor Basilius Peperzak, "Introduction," *Modern Freedom: Hegel's Legal, Moral, and Political Philosophy*, Dordrecht, 2001, 27-29. See also: "It may indeed be disconcerting that only today do we doubt—and not everyone does—that Hegel's lectures ... are actually reproduced authentically in the published edition ... that did not become full-blown for more than a hundred and fifty years. *We can hardly examine here all the reasons for this circumstance.*" Annemarie Gethmann-Siefert, "Introduction: The Shape and Influence of Hegel's Aesthetics," *Lectures on the Philosophy of Art: The Hotho Transcript of the 1823 Berlin Lectures*, Robert F. Brown, editor and translator, Oxford, 2014, 32-46. [Editor]

and has made many portions wear an appearance of inconclusiveness and precipitate assumption.

The treatise commences with an introduction designed to show the general principles on which the subject of Right is treated in the body of the work. It also furnishes a link to connect this treatise with the other branches of philosophy worked out in Hegel's comprehensive scheme. But the connexion is not so intimate as to render a knowledge of even the outline of the author's philosophical system necessary for the study of this particular work. The better we know how a man thinks on other subjects, the better shall we understand the thoughts with which he presents us on the subject with which we are engaged. But that is all. We may take down the volume of Hegel's works containing the *Philosophy of Right*, and although we have never opened any of the other volumes, we shall not find what we read unintelligible. We may feel that there are questions suggested by what we read which do not receive a solution in the pages before us, and yet which we are sure the author would solve in such a manner as would make us apprehend more clearly the mode in

which he discusses the problems belonging properly to the province of Right. But we need not travel beyond the limits of this peculiar sphere in order to apprehend its true character. And while it is absurd to speak as if, through the mere application of common sense, we could ever have Hegel “made easy,” yet we need not refuse to understand intelligible thoughts because they are hedged about with some dialectical subtleties. Any work dealing with the metaphysical principles that lie at the foundation of our moral and intellectual being cannot but be abstruse, and we have here the added difficulties of German thought and German expression; but still, when once we have accustomed ourselves to **[217]** the novelty of the author’s manner of thinking and writing, we shall find the general outline of the book simple, and its general purpose clear.

The philosophical science of Right, we are told in the opening paragraph, has to consider the Idea of Right, that is, the Conception of Right and the realisation of that Conception. The meaning of the terms Conception and Idea, the relation they bear to each other, and the way in which they are contrasted, are therefore the first points

we have to consider, and their comprehension paves the way for much that is to follow. Fundamentally, the distinction between a Conception and an Idea, in the sense assigned to the terms by Hegel, is that between a subject of thought as embraced by the mind and its realisation externally to the mind. Strip any subject of thought of the realisation which it receives in actual existence and we have the Conception; add the realisation and we have the Idea. The conception and its existence are, indeed, two sides of the same thing. They are distinct, yet, like the body and the soul, they are really one. The body and the soul are but one life, although each can be said to lie without the circle of the other. Without a body, a soul has no life, and comes to nothing. And so the actual existence, the realisation of the conception, alone gives it value. But the body obeys and corresponds to the soul, or else it is not the body adapted to the soul.⁵ So, too, the realisation is moulded

⁵ This is sometimes known as *Correspondence Theory* in the works of the modern irrationalists. See also: "Kant's philosophy is a high one ... the march of God in the world, that is what the state is." Eduard Gans, "Additions to *The Philosophy of Right*," *Great Books of the Western*

and pervaded by the conception it expresses. And this unity of the conception and its realisation, of the soul, as it were, and the body, an union not to be thought of as a harmony, but as a complete interpenetration, of the one with the other, is the Idea.

What the Conception of Right really is—what we mean by Right when we view it in its most abstract and formal character, through what processes and by what stages it passes to its realisation, and what is the realisation which finally gives it existence and expression, or, in other words, what is its Idea—these are the subjects to the investigation of which Hegel's treatise is devoted. But when we speak of the Conception passing through different stages, and winning its way to its realisation, we must guard against any confusion of what are nothing more than distinct points of philosophical contemplation with something separated and distinguished in the succession of time. It is only by an effort of mind that we disjoin the conception from its

World: The Philosophy of Right, Georg Wilhelm Friedrich Hegel, vol. 46, Robert Maynard Hutchins, editor in Chief, Chicago, 1952, 129-141. [Editor]

realisation. In the first choice of right and wrong, in the first warning against sin, in the first enforcement of obedience, the conception of Right was realised—it received a form, an **[218]** expression—it was something actual and living. But the mode in which Right is realised may be more or less perfect, and the degrees in which an approach to perfection is and has been made are susceptible of historical treatment and chronological arrangement. The various systems of positive law, for instance, that have obtained, and still obtain in the civilised world, are so many stages through which we may trace the progress of Right to its realisation. And as we have sufficient warrant in experience for saying that, as time goes on, Right becomes realised in a manner more and more complete, we may, if we please, imagine this progress infinite, and picture to ourselves mankind as advancing to a full and perfect realisation of the Conception of Right, and we should then have the Idea of Right dwelling in and organising the whole structure of human society.

Any inquiry into the springs and course of man's actions, and any attempt to refer them to a standard by

which they may be regulated, must start with the will of man as the point from which everything else is derived. When the will is really free, when, in other words, it has attained to its own perfection, then man is what he should be. That the freedom of the will is the summary of man's aspirations, the goal to which the tendencies of his higher nature, when unimpeded, are conducting him, and that this freedom is not an abstraction, a mere vague and lifeless subject of thought, but must, in order to exist at all, find a real embodiment in the life of man, are the true positions which form the basis of Hegel's *Philosophy of Right*. What we mean by "right" is, that one thing comes up to the measure of another, can be tested by it, and found not to depart from its rule and standard. That which, when we use "right" in its technical sense, we have to bring to the standard, is the will of man, and the standard to which the will is to be brought is nothing else than its own freedom. The will is then truly will when it answers to this test. The will must be free; freedom must make itself apparent in the will, and we cannot really separate the one from the other. As weight cannot be separated from matter, as weight is really nothing else

than matter, so, if we look at will without freedom it ceases to be will, while freedom without will has no subject.

To the notion of a free will we must add that of personality. The region of the will is something undefined and unbounded, till thought or impulse adds choice and resolve. But when the thing chosen comes by the very fact that it is chosen to be contrasted with all that is rejected, when the particular is placed in opposition to the universal, then personality begins **[219]** to make itself felt. Determination makes will the will of an individual, and the limitation imposed on the will by the fact of a selection having been made is the necessary condition of each man having a separate spiritual life and a separate character. The will in seeking its realisation must move towards a given aim, and means for carrying out this aim must be sought. But the will is not absorbed in its aim. Let us suppose this aim attained; the will still rises superior to the process by which the result is won: It, as it were, upholds the result by its continuous activity, and thus the realisation of freedom, or if we please to vary the expression, the

actual exhibition and expression of Right, would be the perpetual manifestation of man's highest will, of will made personal and unceasingly operative.

It is, perhaps, an unnecessary caution to point out that when we say that the will must be the will of an individual, we are thereby very far from saying that the choice of an individual is, in fact, invariably right. Probably the literary history of the tunes in which he grew up, and the exaggerated importance attached to individual caprice by Rousseau, may account for much of the earnestness with which Hegel presses the distinction on our attention. He points out in more than one passage of the introduction that there is a path along which all must tread, that eccentricity is unreasonable, that in action as in art there is a rule to follow, and as the great artist has no manner, the free man has no caprice; and he bestows especial notice on one of the most subtle and dangerous modes in which the mind swerves from this appointed path, that, namely, when man attempts to get rid of the limitations imposed on his nature by the circumstances in which he finds himself, and to attain what is conceived to be his ultimate end by whatever

means and at whatever cost. For the will possesses a power of separating itself from circumstances and cleaving only to the abstractions of pure thought; and we then have a freedom, the freedom of the understanding, not of the reason, a freedom which loves to destroy, not to create; to destroy, that is, all that interferes with the carrying out of the pure abstraction. The history both of religion and politics supplies us with obvious examples. In the former we have, for instance, the efforts made by Indian devotees, through asceticism and contemplation, to put off all individual existence, and to lose the soul in Bhrahma; in the latter, such eras as the Reign of Terror, when all was destroyed, even the handiwork of the Terrorists, in a desire for equality.

Thought gets higher as it gets more concrete. We have to trace the realisation of the conception,—the passing of the [220] subjective into the objective. And as the conception comes to be realised, each expression, each mode in which the conception gains form and body, is in its turn a conception, while these subordinate conceptions are all contained in the realisation of the original conception. They are a row of forms under which

it clothes itself. But the scientific order in which these forms occur is independent, as we have said above, of the historical. For instance, a family presupposes morality and property, and yet a family exists before distinct notions of morality or of the rights of property have been worked out. Really all the moments of the idea (*i.e.*, points or stages of its development distinctly appreciable) are coeval, and we cannot speak of the conception attaining anything new, unless we wish to confine ourselves solely to the historical treatment of the subject. But even in treating the subject philosophically, we must adopt some order, and the order we adopt can be no other than to begin with the abstract conception and end with its highest realisation. And the main body of the work is accordingly divided into three parts: The first treating of Abstract Right, where we look at personality merely in its external character; the second, of Morality, where we look at the internal side of personality, and in which the choice of the subjective will is compared with and tested by that which is universally good; and the last, of the Realisation of Right, where the idea of Good is carried out, both in the subjective will and

the outer world. The exact significance to be attached to the several steps of this process will, if obscure in the statement, receive, we believe, sufficient elucidation as we come in order to the several parts of the treatise. Recapitulating the divisions in the simplest language at our command, we may say that we first inquire what are the outward means by which the rightful will expresses itself; then, what is the standard by which each man is to know whether the expression of his will is rightful; and, thirdly, when the will employs those means, and is guided by the measure of that standard, what is the highest form in which we find it manifested.

The first part of the work, then, treating of Abstract Right, is principally devoted to the discussion of the modes in which the personal will manifests and asserts itself. But the personal will is here kept apart at once from the contingencies introduced by the will of particular individuals, and from any such limit as morality would impose on it. Starting with will, with choice, and therefore with personality, as the foundation of our system, and acknowledging that the will must will something, and that we cannot really separate that

which is willed from that which wills; we ask, what is **[221]** there that we must thus add to the mere notion of choice, in order to complete the notion of will, even exhibited in the most formal manner, and subject as little as possible to the conditions of actual life? Now, when we thus inquire what is the general word which expresses that which is external to the will, we of course answer that “thing” is the term we naturally oppose to “person.” It is by impressing itself upon things, by stamping its mark upon them, by rendering them tied and bound to it, by, in one word, appropriating them, that the will, which is the constitutive element of the person, gains that character of reality which is necessary to its own completeness. And in examining the mode in which this manifestation, or, if we may coin the word, this externalisation of the will exhibits itself, we may distinguish two great spheres of its operation, the one that of appropriation of things through personality, forming the basis of property, and that of the union of two wills respecting things appropriated, forming the basis of contracts.

The world of persons and the world of things thus make a whole, and the old Roman division between the rights of persons and the rights of things was founded on an imperfect perception of the real truth, for the latter are included in and flow from the former. And persons may be said to give things that appearance of real existence, which external nature wears to our mind as we contemplate it and bring it home to our thoughts. It communicates soul to “things”; a beast merely consumes things, but we give them, final as they are, a part of our infinity. Still more obviously is personality the foundation of personal property. Property is not property till the will has appropriated it; and so too of corporate property, as that property is also capable of being resolved into personal; but it is less intimately bound up with, and is less manifestly the representation of, any personality, and the State has therefore, Hegel observes, much more right to interfere with it than with the property of individuals. The dissolution of monasteries was a much more justifiable act than the imposition of forced loans. The thing with which the will has the most intimate connexion, and therefore the greatest right to have

secured to it, is the body in which it resides. Our limbs and our life are ours, because they depend on our will. A beast cannot mutilate or kill itself. And it is this close connexion between the body and the soul, between the immediate condition of the active realisation of the will, and the will itself, which separates personal aggression from injury to property.

There are three chief channels through which the relation **[222]** of the will to the thing is expressed. We may seize, or, as it is technically termed, occupy a thing, we may make use of it, or we may alienate it. The primary right of property is that of occupation, which may include three processes, namely, corporeal seizure, formation (*i.e.*, the giving matter some particular shape in order to adapt it to our special purposes), and designation, *i.e.*, attaching some mark to it by which we indicate the fact of our proprietorship. We may observe, that in these processes we gradually pass from what is particular or affecting part of the thing to that which is personal and affects the whole. Corporeal seizure can generally embrace but a small portion of the thing seized, but when we say of a thing that it is our property, our

assertion applies to the whole. This first process of occupation, when we visibly possess ourselves of one portion at least of the thing, (and not only the whole thing is to be considered thereby occupied, but also all that attaches to it, as the rights, for instance, of water, chase, or minerals,) is certainly the most satisfactory mode by which we can proclaim our ownership, inasmuch as it is an apparent fact; but then it can only be a temporary one. When in the next stage of occupation we give a particular form to the matter which we have in our hands, we seem to bring that which characterises our own individual selves into a closer relation with the material object. And when we speak of forming or shaping a thing, we must be understood to use the terms with the widest latitude; for a person who breaks in a horse, perhaps even one who preserves game, may be said to form, to give a new value, either qualitative or quantitative, to their property. And when we come to separate this forming power in man; from the other parts of his nature, we may say, perhaps, that it is only through the formation of himself, through the cultivation of his spirit and body, that he takes possession of himself and

becomes the property of himself as against all the world. And so far as slavery can be defended at all, it must be defended on this ground, that it lies at the door of the slaves, not of the masters, and that at a particular stage of society and at a particular point of man's cultivation, it may be regarded as a necessary phase in the transition from the natural state of man to a state truly and properly moral. Lastly, among the processes of occupation, comes that of attaching a mark of ownership to the thing owned, which is the highest form assumed by the acquisition of property; there need be no connexion between the mark and the thing, and no real value in the mark; a cockade is a badge of a state or party, but has no connexion [223] with it excepting in the common ideas of the wearers. That man can give a sign or mark of his occupation, and thus acquire, is the most signal proof of his lordship over things.

The second step of property is to use the thing, of which occupation has made us the owners; and as far as we can speak of the purpose of a thing, we may say that its purpose is only answered when man makes use of it. The use of a thing may, however, be separated from the

propriatorship, because the use may be only temporary; and thus we have the interest of usufruct or use opposed to full ownership, and between the two there are endless degrees of approximation. Sometimes the separation between the nominal owner and the usufructuary possessor is as complete as is possible, if the nominal ownership is not to be extinct. While, on the other hand, in a mortgage, the mortgagor has usually the revenue and proceeds of the estate, with all the advantages of apparent proprietorship; while the mortgagee has the portion of the revenue which represents the interest of the capital he has lent. But it is only temporarily and by express arrangement, that the use can thus be separated from the proprietorship. For whenever the cessation of the use indicates the withdrawal of the presence of the will, property may begin to be lost by prescription. Prescription is not a matter of merely positive law, arranged for the advantage of the community; but it is a matter of natural right. It is the expression of the necessity which the will is under of continually exhibiting itself as external, just as there must be a continuous stream of thought in the same direction, that national

works of art should belong to the dwellers in the country. The Turks have nothing really to do with the ancient monuments of Greece and Egypt.

The last step in our power over property is the power of alienation. We may withdraw our will from the thing into which we have infused it, and may thus create a vacancy to which the will of another may succeed. There are, however, some things from which the will of the owner cannot be rightly withdrawn; and chiefly, the spiritual nature of man, and the sum of his powers, of whatever kind, ought to be treated as incapable of perpetual alienation, and one who has alienated them, that is, a slave, has an indestructible right to free himself and reclaim from the dominion of another what none but himself can rightly own. The production, however, and the temporary use of each man's capabilities, are capable of alienation. For they are, as it were, accidental; the substance, namely, the capabilities themselves, is still in the possession of the owner. And **[224]** there are cases in which it is necessary to discriminate very carefully between the different degrees of completeness with which the author really withdraws, or intends to

withdraw, his rights of ownership from the productions of his powers, especially his mental powers. When a new book is published, for instance, the particular copy passes into the possession of the alienee, but the original and the right of reproduction remain with the author. And his right does not rest exactly on a condition made in publishing that he shall possess the original, but on the fact that the possession of the original is a separable ownership, which he never abandons.

Alienation naturally conducts us to the subject of contracts. A contract may be said to be that moment of property in which a person shows himself to be a proprietor, by ceasing to become so on finding his will identical with the will of another. In this unity of different wills, their difference and feeling of separate proprietorship vanishes, but still so that the feeling of the power to possess separate property is not lost. In a contract, properly so called, both parties must give and both receive; and a contract in which only one gives and one receives, is only a formal contract. A stipulation is but one moment of the contract, it expresses only what the formal contract does; one gives and the other

receives, and so it has been called a one-sided contract. And the division of contracts into unilateral and bilateral, and other such divisions, in the Roman law, are founded partly on a superficial colligation of things really different, partly on a confused admixture of matter, such as actions, not properly included in the contract. So, too, the Roman distinction between a contract and a “pact” *i.e.*, between an engagement that could and an engagement that could not be enforced by legal remedies, was an unscientific one. Fichte once maintained, that as we could not tell that another person meant to fulfil the contract, it was not real until it was actually performed. But the truer statement is, that the contract expresses the fact of the wills having agreed, and we have not to consider whether a person can shrink from his engagement, but whether he has a right to shrink. There may, of course, be contracts in which the performance of one engagement cannot begin till that of the other is completed, as, for instance, in loans; or a similar position of the parties may be made a matter of express contract. But this does not affect the statement

above made, that the contract attains its existence in the expression of the agreement of the wills.

The divisions of contracts are not accidental, but rest principally upon the difference that exists between real and [225] formal contracts. The chief heads of contracts are—1. Contracts of gift, including (a) the gift of a thing (*i.e.*, gift properly so called); (b) the loan of a thing without interest or other return; (c) the gift of the use of a thing, but we must limit this by saying that the gift must here be made on the condition that it shall be terminated by the donor's death, for testamentary dispositions belong to the arrangements of a State, and not to contracts. 2. Contracts of barter, including (a) barter as such, which may be either of a specific thing in exchange for another specific thing, or of a specific thing in exchange for money (b) hiring, which again may be either of a specific thing, so that the specific thing is to be restored, or of a thing so that an equal amount of the same thing is to be restored; and (c) hiring for wages. 3. The completion of a contract through pledges: This comes in between an engagement and the performance of the engagement. It is a warrant for the performance,

the warrant consisting either in the deposit of some thing, or in some person becoming surety.

While particular wills are thus brought into a union with each other, they also stand in a certain relation to the universal will, that is, to what the will of man is when we view it as a whole and see it extended through the wider sphere that lies between its conception and its highest realisation, or, in simpler language, we may compare the particular expression of the wills of individuals with what ought to be that expression. This relation of the particular to the universal will, leads us to the consideration of wrong. In right, the self-existing right and its realisation in the particular will harmonise, but not so in wrong; there is thus a negative character attaching to wrong: It is an apparent expression of the will but not a real one, and this appearance may take the form either of simple wrong,—*i.e.*, when the action, as compared with the standard of real right, is wrong, but the actor is not conscious of the discrepancy; or of deceit, when the actor is conscious of this discrepancy, but attempts to conceal it, and the action wears the appearance of right; or, lastly, of crime, when the action

is wrong, the actor knows that it is so, and no attempt is made to give an appearance of right. Under the head of simple wrong, would come acts of social and constitutional injustice, where in almost every case the perpetrator of the injustice thinks that he is warranted in his conduct, either by the circumstances of the past and present, or by the exigencies of the future. In deceit, it is to be observed that the contract is properly carried out,—each gives, each receives. But there is an apparent reference made to a universal right, and that this is only apparent constitutes the deceit. **[226]**

But it is in force and crime that wrong is most clearly manifest. As the will has to be externalised, it becomes subject to necessity, to power; and, if to power, then to force. Force is the expression of a will which hinders another will from freely realising itself, and thus, as contrary to right, is wrongful; it destroys its own conception; it expresses a will, but expresses it wrongly. But force may, of course, be used rightly, as, for instance, in education, when it is exerted to check the power of the natural will against the real will. We may observe that heroes, who are as it were the representatives of force

used aright, can only find their place in the early ages of a nation. They may seem to be expressing their own will only, but really the force they use is the exponent of the higher right. Crime, the sphere of penal right, is the forcible negation of right, in which right both subjective and objective is contemned; and if we were to pursue crime under its different forms, we should find the same notion always underlying. The amount of wrong may, however, vary endlessly. We find differences of quality and quantity entering into the consideration of the expression of wrong in crime. The Stoic view of one virtue and one vice, and Draco's Code with its punishment of death for all offences, both looked to the oneness of personal existence, and not to the variety of forms under which this existence must be realised. In considering these differences, positive enactments are necessary to determine the amount of punishment due to the particular amount of wrong involved in this or that wrong; and the more consideration is bestowed, the milder does the penal code become.

Punishment is the exhibition of right made active, and, as we may say, "righting" a wrong. The injury only

expresses the particular will of the committer of the crime. Then to destroy this will as an actually realised will, is the mode in which the crime is done away, and is the restoration of the right. Much confusion has existed as to the theory of Punishment. Writers have not ascended high enough. They have not sought the explanation in the conception itself. For instance, Feuerbach grounded his theory on the principle of threatening or warning: When, he said, warning has been given, it is right to punish. But whence the right to threaten? whence the right to limit the will? We ought to say, crime must be done away with, not because it brings forward an evil, but because it injures the right as right. And the right under which punishment comes is a right which would be the expression of the free will of the criminal himself, and so cannot be said to be independent of him. **[227]** Beccaria denied the justice of capital punishment on the ground that all social relations are parts of a contract between the State and its members. The consent of the individual to his punishment would thus be a necessary condition, and it can scarcely be presumed he would give it. Now, though

we may reject at once the doctrine that the State rests on a contract, yet we may admit that man must give his consent to punishment. He must do so; but then the criminal, by the very act of his crime, has virtually given his consent. In that he has used force against right, the realisation of right requires that the crime which is the result of this employment of force should be done away with by the employment of counter-force. We must look on punishment as something due to the reasonable part of the criminal. Punishment is the other half of crime. It is the task of the understanding, not of the reason, and therefore does not come within the scope of this treatise, to ask how we may ensure a similarity of value between the injury and the recompense. As to murder, nothing but life, which is the whole of our earthly being, can be the equivalent of life; the payment, then, must be the exact counterpart. Only there must be nothing of personal feeling in the infliction of the punishment. "Vengeance is mine," says God; and it belongs to the State, which is in some degree God's vicegerent on earth, to exact punishment. Whenever the subjective will is allowed to intervene, something of revenge always

manifests itself; as, for instance, when under the Roman law theft might be punished by the individual. Men who have suffered the injury cannot see the degrees of right and wrong. They only look at the wrong itself, and may thus, like the Arabs, perpetuate vengeance from generation to generation.

We now pass to the second part of the treatise, the subject of which is Morality. Hitherto we have spoken of the will as finding its realisation in something external; a further step is, that it should find its realisation in itself, in something internal. At the same time that the will is expressed and manifested in the outer world, it still maintains its close connexion with the personality and individuality of man; it resides in man, it is something subjective; and we may say, that on its subjective side it is as free as on its objective: Every one feels his freedom, and that he is only responsible so far as he is free. It is this inner freedom, this subjective character of the will, that stamps their value on actions. What men do is judged of and estimated by the motives that prompt them to do it; and the more nearly we attain to the standard of human perfection, the more thoroughly do

we desire [228] that our inner selves should form a part of all that we do. But when we speak of the subjective will, we must remember that we do not mean by it the wish for any one thing, but the possibility of wishing anything. This whole capacity of wishing must be exercised in accordance with the development of the will on its subjective side, according as that will ought to be developed, if the conception of the will is to be realised internally as well as externally; but there is a possibility that in any one instance this harmony may not be found. Morality is the demand, the claim that it should be found; and when this demand is complied with, then right is realised in the heart of man, and on its subjective side. The subjective will proposes to itself an aim; and it is the reference to this aim which characterises the action; for the subjective will makes in all but the feeble-minded a constant effort to pass into the objective. In doing so, it brings the individual into collision with the wills of others. In formal right we do not get to actions properly so called; we have no distinction of subjective and objective, although in crime something approaching to the distinction is undoubtedly made: Nor is there any

general reference and relation to the wills of others, for in contracts the reference to the wills of others is limited to one particular thing.

When we look on Right as it is seen in relation to Morality, we may distinguish three sides on which we may view it. First, we have what Hegel terms the abstract or formal right of the action: It must be the purpose of the subjective will of the individual; it must receive a character as being the product of the individual will of a particular person. Secondly, the action must be directed towards some aim, and the most general description of our aims is, that they are directed towards our well-being. Thirdly, the particular will should be in harmony with the conception of the will, and the existence of this harmony is what we mean when we speak of the good,—the internal expression of which is conscience.

The first point, then, we have to look to is, that the development of will on its subjective side expresses purpose; and as it is by the purpose that we judge of the worth of an action, we may say, if the purpose be bad, that it expresses guilt.

We propose to ourselves some object, and then, when we set ourselves to carry it out, we find it surrounded with an almost infinite complication of attendant circumstances. In each of these some degree of guilt may attach to us. For the outward act is not here, as in crime, the only criterion. There is, however, what may be called the right of knowledge, *i.e.*, that the will can only be held accountable, and [229] can only incur guilt in so far as the attendant circumstances were consciously included in the purpose. The will need only hold itself accountable for the first links in the chain of circumstances. We can scarcely judge of an action by its consequences, nor yet can we entirely omit them in forming our estimate. If a bad action has better consequences than was expected, the actor has the benefit, and so in some degree the value of a good action is lessened by its bad consequences. The ancient feeling on this point was stronger than the modern, and we may see in the tragedies turning on the story of Ædipus, how closely ill-fortune was associated with guilt.

Again, an action may be split up into many particular circumstances, to any of which our attention may be

chiefly directed. Still they are all directed to one point, and it is this point that characterises the action as belonging to a class. We think of killing a man: then murder would be the one word which would express that our action, besides containing endless particularities of time, place, misery, cruelty, and so forth, came under a general head. Besides this general drift of the action, there is also some particular motive which has impelled us to act. If we kill anyone, for instance, we have some motive for it, if only the wish to commit murder. This motive is the subject of moral consideration. Accordingly, many inquire into the motive of an action as the only point important to be investigated. But this is not going far enough. This motive is rooted in a general desire to satisfy our wishes, and our wishes depend on our having learnt more or less to desire the good and the right; and we must, therefore, look to this general desire in order to estimate aright the conduct of the actor. The aim or view of the action includes this general desire, and also a more particular one, and implies a reference to those natural appetites, prejudices, and thoughts, which are common to all. The satisfaction of these may be

comprehended under the general term Well-being, by attaining which we may be said to gratify the aspirations of our natural will. Well-being or happiness is a universal rather than a particular aim; and though not the highest aim, for it does not imply a conscious subordination to reason, is one not unworthy of us. We reach through it a point in which thought, as in the time of Croesus and Solon, though not comprehending the full freedom of the will, yet seeks some higher aim, and a better happiness than a low and natural one.

Actions, as we have already said, derive their value from the individual; if he is worthless, so are they. And it is **[230]** the expression of the individual which constitutes the great difference between ancient and modern times. It is to this we are to ascribe love, romance, and the ideals we form of a happier state. With this is connected the distinct recognition of conscience. It has affected our political institutions, and has coloured art, science, and philosophy. We must not, however, speak as if every great action was to be traced to the particular wishes of individuals, and as though the consequences to themselves, fame, honour, excitement,

have been the only motives of heroes. This is not so; the particularity does indeed exist; they have such feelings; but they have other and higher feelings also; and the particularity exists in intimate connexion with the universal. We may add, that when we speak of this particularity as of real importance, we must not forget that in order to be of any value it must be carried into action. It is not enough to wish great things, we must do them. The laurels of great wishes are dead leaves.

Nor again may we plead our particularity as an excuse, either for interfering with the free acts of others, or for departing from the fundamental condition on which this conception rests, that it shall be brought into harmony with the conception of right. We may not do evil that good may come. And an evil deed is not justified by our motive being the well-being of ourselves or others. The contrary, however, has been a doctrine widely spread during the present century, partly owing to the maudlin sentimentality of second-rate dramatists in favour of well meaning villains, and partly to the idea that every one was justified in acting as his spirit moved him.

When the will gains an existence by expressing itself through the highest freedom of an individual, the form of this existence, in which we have the highest universal always in relation to an individual, is the Good. And conscience is the subjectivity, having knowledge of, and expressing the contents of, the Good in itself. The Good is not a mere abstraction, but contains at once Right and Well-being. Well-being is not good without right, nor is right good without well-being. We must not say, *Fiat justitia, pereat mundus*, for we require that the world should be preserved as well as justice done. The Good is the existence of the will in its substantiality and universality. It is therefore embraced by, and existent through, thought. The doctrine, then, that all our knowledge is illusory, and that thought is prejudicial to the goodness of the will, at the same time that it destroys all intellectual, also destroys all higher moral dignity. It is because the Good is the realisation of its will, that it imposes an **[231]** obligation on the particular subject. The Good when looked at apart from the subjective will is duty. That we have to secure the Good as the realisation of our will, is, in other words, to say, that we

have to follow duty for duty's sake. We cannot, irrespective of particular occasions of acting, say what duty is, unless, perhaps, we may say generally that it is the obligation to care for the well-being of ourselves and of others. As presented to the moral self-consciousness, and apart from its realisation in the sphere of action, duty is an universal without contents; that is, we then think of duty without thinking of particular duties. Kant proposed as a form of expressing duty, that the maxim contained in the action should always be capable of being made universal. It is true this gets rid of any contradiction. But that is not much. It would get rid of all the contradictions incident to property if the race of men ceased to exist. Where are we to get our maxims from?

Conscience expresses the reflection of man into himself. It is the deepest internal self-communion, where all that is external and limited has passed away, the thorough retirement into the recesses of our own hearts. Man viewed in the light of conscience is no more fettered by particular aims. It is, therefore, an advance, that modern times have so distinctly recognised the binding force of conscience. The ancient world looked for

something externally imposed on it as the guide to right, and found its strength in the outward bands of religion or law. Conscience knows itself only as thought, and this thought is the only source of obligation. It claims to know what right and duty are, and to recognise nothing as good except what it knows to be so. At the same time its decision is felt to be really free, and is invested with a peculiar sacredness. Right and duty do not, however, belong to the individual. They are expressions of the universal, and in the realisation of the will, assume the shape of definite and positive ordinances. To these conscience is subordinate, and so the State cannot recognise the differences of individual consciences, which only have weight with particular persons. There is an ambiguity attaching to the value in which conscience is held, from the mere self-reflection being confounded with that self-reflection subjected to and determined by reason; for the result of self-reflection may not only be negative, but may be positively bad. We may commune with our own hearts, and then instead of submitting our particular desire to our conception of what is universally right, we may choose to do the contrary; we may forsake

the good and choose evil. The natural will is both **[232]** good and bad; we cannot say exactly that it is one or the other. But when we place this will in conscious opposition to the will as the expression of man's highest freedom, to the will that cleaves to the good, then to adhere to the suggestion of the natural will, although we perceive that by so doing we trample upon the dictates of our higher will, is evil.

A bad conscience is not the only test of an action being bad; for if so, the very bad would, in Pascal's language, cheat the devil, having seared their consciences. The subjective and objective sides of truth cannot be separated, as if their union were only contingent. On the formal side, evil is indeed as much a part of man as anything can be; but on the objective, man is a reasoning being, having to do with the universal, with freedom and right. It violates the dignity of man that he should not be held responsible for the evil he does, although we cannot say beforehand what is the exact amount of consciousness which determines the character of a deed.

Self-consciousness has a positive side. It can claim to give a colour to an act as done with reference to a particular end. To make the colour all in all, and to confuse what is so personal to ourselves with what is really good and right, is, if we act with reference to others, hypocrisy, if we act with reference to ourselves, the highest absolute subjectivity. Hypocrisy, in its coarser form, is perhaps a vice that is wearing out. But hypocrisy now assumes a shape more subtle and elusive, that, namely, of probabilism. A man selects one good ground, for instance, a theological dogma, and acts on it as if sure he were right. There are perhaps endless pros and cons in the objective truth; so he falls back on his subjectivity, and he determines to adhere at all hazards to one position, which he maintains and forces on himself as true, without being at all sure it is so. Such has been the teaching of the Jesuits. A further step in probabilism is, when the ground selected is not some external authority, but an internal persuasion: A philosophy which denies any power of apprehending real truth, must seek for its right in the particular persuasion of the individual. It is through the prevalence of the view that it is the

subjective persuasion by which the rightful nature of an action is expressed, that formerly so much, and now so little, is said of hypocrisy. For hypocrisy implies that the actor comparing his acts with an objective standard is conscious they are wrong. But now, if a person acts honestly, and thoroughly believes he is right, then it is said he is right. The consequences of this principle are **[233]** monstrous. Positive enactments lose all their force. The prescription of ages (the sum of a myriad individual persuasions), the revelations, of God, and the lessons of wise men, are to have no force against the independence of the individual. Evil becomes a mistake: *Errare humanum est*. The thing one day established as the highest and best expression of the rightful, would be next day trampled under foot. If we have not the power of thinking truly, that of thinking is a poor boon. Others, relying on their persuasions, may think our acts crimes, and so we lose all our freedom.

Looking to ourselves, not to others, the highest form in which this subjectivity expresses itself is that which bears the name of Irony, a term borrowed, though with an altered signification, from Plato. It consists in a person

knowing perfectly that which objectively is right, and then, instead of forgetting himself in it, and losing himself in the earnestness with which he pursues it, in his holding it as it were apart from him, and so expressing that to choose it or not is in his power. Not only is there an avoidance of all duty and right, but there is a subjective voidness. He is conscious that he empties himself of a glory that might be in him, and feels a pleasure and triumph, as of a species of sovereignty, in doing so. Fichte's philosophy, which made the subjective will of the individual absolute, led to irony; it placed arbitrary personality above objective right. Such a philosophy can only come at a time when faith strives to establish itself on the wreck of the external world.

The necessity for something external, actual, and positive, in which the good and conscience are to manifest themselves, leads us to the concluding portion of the treatise. Abstract right and the subjective will are now to be constituted into an objective whole, and thus become the moment through which the conception passes into the idea. The word used by Hegel to express the sphere, in which this realisation of the conception

takes place is, *Die Sittlichkeit*, which we may, perhaps, translate with sufficient accuracy “rightfulness,” the sphere in which right attains its completeness. Neither right, nor morality, can have any real existence in themselves. They require the rightful to give them expression. The idea alone is actual and real. Right exists only as a branch of a whole, as a plant which fastens itself by its tendrils to a self-sustaining tree.

By the side of the rightful, individuals stand like something temporary and accidental. They require positive ordinances, an outer framework of life, as one of the conditions of their being, and the rightful, with its expressed and [234] manifested reason, wears to them an air of infinite power and authority. Its system is far more impressive and unvarying than the system of physical nature, which does, indeed, express reason, but only in an external and indirect way, and shrouds itself beneath a veil of contingency. At the same time, it is not something apart from the individual, it is rather that in which the spirit is conscious of having its true being, that which gives faith and confidence in ourselves, and thus opens the springs of a new life. The expressions of the

rightful stand to the individual, if we look to the side of his subjective will, as duties obligatory on that will. And duty, as viewed in connexion with the realisation of freedom, presents itself in a new aspect. Apart from this realisation, we have, in determining what duty is, to take into consideration the numberless circumstances by which individuals may find themselves limited and influenced, the variety of aims and impulses to which their actions may be referred, and the conflicting claims of opposing and counterbalancing rights. But, as freedom is realised, as it receives more perfectly its true expression in the State, duty wears in an increasing degree the air of necessity, and the relations it assumes are more of a fixed and determinate character. And duty, properly speaking, can never be a limitation. It is, indeed, a limitation to the unexpressed subjectivity, or abstract freedom, to the impulses of the natural will, or the moral will acting arbitrarily, but really, the individual has his freedom in duty. He emancipates himself from the dependence in which he stands while he obeys the mere impulses of nature: He escapes from the agitation of

moral conflicts, and the very circumstance that his subjectivity is expressed makes it real.

At the same time that the subjective is thus perfected in the rightful, it gives to the rightful all that is living and characteristic in it. It is the life of the rightful, though all that is peculiar to the individual has now vanished away. The rightful, as reflected into the individual character, is virtue. And, at particular periods of the historical development of right, it seems necessary that the rightful should borrow a deeper colouring from the individual than at others. In early times heroic virtue seems to find a proper home, for then the State is only very crudely formed. And while virtues are thus, as being referred to the particular individual, something unexpressed and undefined, they may be said to gain an expression in the quantitative power of more and less. Hence Aristotle's doctrine of the Mean. We may observe that the French speak more of virtue than any other [235] people, because the rightful is with them more dependent on personal character.

A father asked a Pythagorean how to educate his son, and received for answer, "Make him the citizen of a good State." It was a wise and true answer. Rousseau, in his *Emile*, advocates the opposite course, and says, "Educate him in solitude." But although we cannot say that the spirit is too weak to live alone, that it has not power to overcome the difficulties thus placed in its way, we may be sure that solitude does place difficulties in the spirit's path, that it is an impediment, not a help, and that only in a State does the individual find the Right that is due to him. The State is the realisation of freedom, the development of the idea; and in the process of this development we have distinct stages at which we may pause to trace its operation. First, we have the primary nucleus of all human union and fellowship—the family; then as the family is broken up, its disruption paves the way for the social community, the members of which, bound together by their mutual wants, establish Right as a means of securing persons and property, and enter into an external arrangement for the promotion both of their private and their common interests. Lastly, this external skeleton, this framework of the State, becomes

penetrated by the spirit, becomes the abiding place of the idea, expressing as substantial and realised what is universal in the subjective will, and then we have the State in its perfection and in its fully developed constitution.

The family begins the union of mankind. The spirit finds itself bound to another, and in this tie feels the assurance of its own existence. Of this tie love is the foundation. Love is the consciousness of our unity with another; it is a sentiment, it is something natural, though belonging to the sphere of the rightful. Love contains, first, the wish not to be an independent person, and a feeling that, were we so, there would be a void; and, secondly, a recognition that, through another person, we attain a position we could not otherwise arrive at, and become truly what our best nature bids us become. It brings forward a contradiction and unravels it, and it is in the last character that it is an expression of the rightful unity. The first side, therefore, on which we have to regard the family is that which connects it with love, namely, marriage—the basis and beginning of all true family life. Marriage is not merely founded on the

gratification of our natural appetites; for if we set out with that supposition, we find no means of explaining the higher purposes marriage evidently has. Nor is it a contract between the two parties, as **[236]** that would fix its sphere in individual arbitrariness. Nor yet does it consist only in love; for love, which, as a sentiment, is contingent, cannot perfectly accord with the notion of the Rightful. We may more nearly describe marriage as love based on Right, and carried out into Rightfulness; whereby all that is transitory, capricious, and subjective, passes away from it. And it is not absolutely necessary that love should precede marriage, for the beginning of marriage may either be mutual inclination or the arrangements of parents and guardians. The latter is bound more closely with the developed expression of the Rightful, the former as the fuller expression of the individual, and so more in accordance with the spirit of modern times. In modern dramas and novels the plot generally turns on the passion of love. The issue is of immense importance to the parties themselves, but still we feel a chilling sense of contingency running through all—the contingency of passion and of external events.

Marriage is properly monogamy, as this is the only true reflection of personality; and, as being one of the great principles on which the Rightfulness of a community rests, the institution of marriage is made in ancient legends a part of the foundation of the State by gods and heroes. The identification of personalities, whereby the family becomes one person, and the members of the family are but accidental as compared with that which is really substantial, namely, the intimate and sacred relation constituted between them—is the source of the reverence with which, as we see, for instance, in the worship of Penates, marriage and family ties have been honoured, and of the feelings of piety they awaken. When, however, we speak of marriage as affording something more than the gratification of our natural passions, we must remark, that we cannot expel what is natural from the union of the sexes. If any such attempt is made, as has been done in what is termed Platonic love, nature is sure to avenge herself. When, as in the monkish doctrine, the natural passion is wholly negatived, it is thereby made of unnatural importance. The two sexes must unite, and they must unite so that

while they retain the differences respectively inherent in them, the union they form may be real and absolute. Especially the woman has in the family her substantial expression, and in family piety her rightful frame of mind. Differences between the sexes will always subsist. Women may be well educated, but are not made for the higher departments of philosophy, art, or science. They may have tact, taste, elegance, but not the ideal. The difference between men and women is [237] something like that between a beast and a plant. Women are quietly unfolded. Their education is acquired more from life itself than from any acquisition of knowledge, while men have to gain an external standing, and to acquire a positive education.

A family has not only property, like an individual, but also requires that something of an abiding character should attach to its possessions. The care for individual interests becomes merged in that for a common stock. The head of the family represents the rest; still, that over which he presides does not belong to him, but to the family. A new family begins with a new marriage, and it is only an exceptional case when the goods of those who

form a new family are not brought into it. Roman law, for instance, permitted the wife to stand in a nearer relation to her own family than to her husband and children. Her share of her family's inheritance did not necessarily pass to the new family which she entered. So, too, in feudal times, the "splendor familiæ" demanded that all the property should be kept in one branch, and thus younger branches were deprived of their share when they formed new ties. But this is not the natural law regulating the relation of new to old families.

Families, from their very nature, are ever tending to dissolution. Children, who represent the unity of the married couple in an objective form, and give a bodily shape to their love, receive education from their parents and render service in return. But education must give way to the calls of active life, and the children, in their turn, prepare to earn their bread. And thus it happens that children love their parents less than parents their children, for children are moving day by day towards self-dependence, while parents see in children the realisation of their own union. It is, therefore, during the period of home education that the tie is most close. Parents

represent to children their own better will, and may therefore claim obedience; children feel an imperfection in themselves, and look to their parents to help them on to the greatness for which they long. An education which only trifles with this longing, and treats things serious as a jest, stifles the better and higher aspirations of the soul, and sows in children the seeds of contempt for their elders, and of self-conceit, as they reflect on their own more generous and lofty thoughts.

The complete dissolution of the family by the death of the parents leads us to the subject of Inheritance. The view that heirs take the inheritance as the first finders of a property without an owner, quite leaves out of sight all the relations **[238]** really subsisting between the members of a family. They have a right to a share of a common stock, but then, as they are during the life of the head of the family moving on towards independence, some violation, possible or actual, of the strictness of the family is thereby introduced, and as a corrective the head is intrusted with testamentary power. The arbitrariness of the testator is thus a counterbalancing force to the arbitrariness of the dependent members; but the whole

tenor of education, the whole force of political institutions and public feeling, should be directed towards making arbitrariness enter as little as possible into families, provided only that scope for free-will is rigidly maintained. The making arbitrariness a centre-point of the family circle was one of the weak points of Roman law, and drove the jurists, who endeavoured to restore a more equitable system, to the most puerile shifts; hence the family institutions became insecure and a monstrous code of enactments was required to keep the rebellious spirit in check. This was coupled with, and fostered by, loose notions on marriage. Even Cicero proposed to divorce his wife in order to pay his debts with the dowry of another.

New families being formed, a new whole is gradually produced, into the circle of which they are brought by their mutual wants. We then have the social community or the State in its external form. In this community every one is to be looked on as striving for himself, all else is nothing to him; but without entering into relations with others he cannot attain his own ends. Other persons are thus means by which the desired end is attained; but still

this reference to others introduces something of an universal. The individual does not stand apart from the community, nor the community from the individual; the principle of individuality still remains in undisturbed vigour. In most ancient States the play of individuality, the development of what was particular, was the sign of decay. Plato, regarding its entrance into the Greece of his day as the precursor of ruin, could find nothing to do with it but to exclude it altogether from his Republic. In Roman, and still more in Christian times, the development of the individual has manifested itself; and the relation of the individual to the community has given a peculiar character to the education of the modern world. It is the task of education, when the arbitrariness of individuals is not restrained by force, to lead each to attend to the feelings of others. It teaches us to do as others do, and stamps as barbarous all eccentricity, and even all withdrawing into self, even where there is no intention or wish to annoy others. [239]

The first foundation of the social community is then the complexity of human wants, the endless requirements that can only be satisfied if the members

of an united body render each other mutual assistance. Political economy here comes in, and tries to deduce general principles from the mass of particular facts. The different wants of mankind are brought by thought under an arrangement almost as regular as the planetary system, and to supply these innumerable wants the fertile ingenuity and persevering activity of man are exercised without limit, for the very satisfaction of some wants creates others. What in England is termed “comfort” is something quite inexhaustible, for each comfort shows its discomfort, and so the necessity for invention is endless. Then, again, as we live in a society we feel a desire to imitate others, which again gives rise to a counter desire to distinguish ourselves from others; and these two feelings add immensely to the complexity of wants. These wants, as they endlessly arise and are endlessly satisfied, bring luxury in their train, which again provokes a feeling of dissatisfaction, and so opens the door to cynicism. And then it is asked, whether it is not the man who can confine himself to simple wants and satisfy them, that is really free. We may answer in the negative, for freedom consists in the spiritual

overcoming the natural appetites, not in the natural appetites being gratified.

Labour is the source by which wants are satisfied; and as every one has wants, so every one having a power to labour, has some means of satisfying them. But these means differ endlessly. For some have more capital, or the stored up profit of bygone labour, than others; some more skill, some better opportunities; and hence the difference of ranks, which forms the second basis of a State, the family being, as we have said, the first. Labour, again, can never be independent of the fruits of the earth. Territorial possessions are necessary for the community, and the introduction of agriculture, admitting of private property and local family position, properly accompanies marriage in the legends of the foundations of States. Gradually trade springs up, which has for its occupation the formation of the products of nature, and for the means of subsistence is thrown back on its own labours and skill. Being thus made self-reliant, traders and cities, where traders are gathered together, are more independent and more assertative of their rights, while agricultural populations, accustomed to

dependence on nature, are more tolerant of external control.

In order to keep the different members of the society in **[240]** their proper relative position, and to protect them in satisfying the wants of men, and in the enjoyment of that satisfaction, justice must be administered. Right must take the shape of positive enactment. It must lay down rules universally applicable. An enactment is not only the form of the universality of a right, but its true expression. Even rights of usage are expressive of Right, though only in a subjective and imperfect manner. Customary rights (at first the only rights) are at length reduced to writing, as in the English common law, and it is then seen how imperfect they are, and how much should be added to them. Gradually the written law is made more perfect, and the necessity is recognised that the body of law should be drawn up on a definite and comprehensive system: For a mere collection of decisions, of which the English *Praxis* is a fatal instance, though captivating by its particularity and its historical associations, is very imperfect. Enactments must embrace all the different points arising from

property and the wants of the community, and family ties, but only on the side of abstract right, not on that of morality. For all our higher feelings are only subject to enactments as far as they can be externalised. But the question where the limit is to be set, receives a very different answer in different nations. In China, for instance, a man is to bestow the greatest love on his first wife, or he is cudgelled. There are again many points which legislation must decide, but which apparently might be decided as well one way as the other: As, whether forty stripes are to be inflicted, or forty save one. These enactments depend on a kind of caprice; but this contingency is unavoidable, and is not a ground for accusing a statute book of imperfection.

We must not expect that any code can be absolutely complete. Details must be settled as occasion demands; but yet, substantially, the law may attain a unity. Like science and philosophy, it can continually put out new branches, yet remain the same tree. What a code undertakes to do is to prescribe the general rules under which property and persons are secured. It lays down the general right, and the corresponding duties which the

institution of property calls into existence. It makes crime no longer an offence against the individual, but against the community. And it may be observed that the guilt of crime is thus increased, for it is an offence against universal Right. But its punishment is less; for punishment expresses the relative force of the punisher, as well as the guilt of the punished, and crime is something unstable and isolated against the compact mass of public **[241]** power; and so the stronger the State, the milder the criminal code.

The form in which justice is administered is so much a matter of positive regulation adapted to the wants and habits of a particular community, that we need not pause to examine it here. Perhaps the most important point to investigate in connexion with it, is the philosophical basis on which “trial by jury” rests. Its foundation is the claim which the subjective self-consciousness of the party whose case is decided on has to be satisfied. As far as the exposition of the law goes, this may be said to be secured by the judge referring the case to some particular head of law, and conducting: The trial openly. But as to the facts, it is only effected when the consideration of these

facts is referred to those who, as in a jury, are supposed to be on a par with the defendant, and to understand his position and feelings. So, too, to punish a criminal, unless he confesses his guilt, is not to treat him as a free man, but he does make an implied confession through the mouths of the jury.

The Rights of individuals, however, demand more than security of life and property. They demand that attention shall be paid to the well-being of each member of the community, and that a subsistence shall be secured to him. And well-being is dependent on so many circumstances,—each, perhaps, apparently trifling in itself,—that we need some protecting power to guard against all that may ultimately endanger our position. There are many actions which under some circumstances are wrong, and others not, and as individuals cannot estimate their true character, they require that it should be estimated for them. These functions are discharged by what, using the title in a large sense, we may term the “police.” The exact province of this “police” cannot be regulated beforehand. We cannot say, for instance, what is and what is not a just cause of suspicion. All great

branches of industry affect the public so much, that the public has a right to control them. Thus, the supervision of the police over the sale of bread is justifiable, because the price and quality of bread affects the whole community. Again, the police has to regulate all such things as roads or bridges, the construction of which benefits all, but does not fall under the province of any one.

There should be a possibility for each individual to share in the common stock, but still only a possibility, so that room may remain for the many contingencies of health, ability, and capital. The State is a larger family, and cannot allow its members to starve; neither can it allow them to dissipate **[242]** their property by extravagance. But many causes besides the fault of individuals will bring them to poverty; and then, as the poor are cut off from education, and the means of religious edification, the community has to provide them with these, while at the same time it has to keep them from idleness and the kindred vices engendered by poverty.

As capital becomes accumulated, labour is diverted into innumerable channels, and on each branch of labour a separate class becomes dependent. This class, immersed in their special pursuit, grows indifferent to, or incapable of appreciating, the higher privileges attaching to members of the community; and hence are formed mobs, large bodies living on the minimum necessary for subsistence; for it is not poverty itself that makes a man one of the mob, but those feelings of separation from, and hostility to, the community, which are so constantly found attending it. The evil is, that all sense of honour is thus lost; men grow to lose all shame of eating the bread of idleness, and think their destitution a wrong done them by the upper classes. There is in such a state of society a superabundance of produce without a corresponding increase of productive consumers, and both evils increase. Capital becomes more and more concentrated in the hands of a few, and the numbers of the idle mass are increased. England is the great field for studying the subject.

As nations begin to produce more than they consume, they look to other nations to relieve them of

the surplus, and the sea is the great means by which this is achieved. The sea is a link, not a barrier, and intercourse with transmarine nations seems necessary to the free development of the resources of a community. Egypt and India suffered greatly from the want of a foreign trade, and we find that all great nations press towards the sea. One form which the desire for a connexion with other bodies at a distance assumes is colonisation, a form highly beneficial to the country from which the colonies proceed, especially if the colonies are emancipated as soon as possible.

Before proceeding to the subject of the State as the full realisation of the conception of Right, we may remark that the community contains within it many smaller circles to which we may give the general name of Corporations, or bodies having a public character. To belong to such a body gives the individual a peculiar footing in the community, and affords him an especial protection. By forming a part of a corporation he sufficiently shows what he is. He need not make his capabilities more known. His position is one ascertained and **[243]** fixed, and, as recognised by the State, is so far

honourable. The corporation acts as a limit upon individual industry, and forces all to look to a common end. In modern States most of the citizens have little to do with the management of the State. They feel the want of some common interest, and this is supplied by the bodies of which we are speaking. It is true that each member of the community in labouring for himself labours for others; but some men require that this idea should be presented in a tangible shape before them. Of course we are not to limit the sense in which the word corporation is here used, by the meaning which attaches to it in English law. Any one of the privileged professions, the army, the navy, or the bar, might be termed a corporation in the sense now assigned to it. It merely means a body, the members of which have, and are recognised by the community as having, a common character and common interests.

In the State we arrive at the last stage of our inquiry. Here Right is realised, the conception becomes actual, the idea is made manifest. Freedom attains its highest objective expression, while at the same time the freedom of the subjective will works unimpeded, for the

State is the highest method of carrying out and developing the individual. The spirit which sleeps in nature awakes to activity in the State. We may say that the State is the coming of God into the world, for Reason is here seen as Will. We must not look to particular States and point out the defects, and show how little they realise Reason. We ought rather to recognise the principle that animates them, the sovereignty which makes the worst State still a State, like the principle of life which makes the cripple alive.

We may compare the State with the nervous system, which comprehends sensibility or internal life, to which the family may be held to correspond, and irritability, through which the sensation is made external, to which the social community may form a counterpart. For the family and the social community are the two elements of which the State is composed, exclusively of that inner spirit peculiar in itself, which it adds to penetrate and leaven the mass. The State, under the operation of this spirit, supplies an organism through which all that truly constitutes family and social life finds its true expression. It builds up institutions, through which this political

constitution or whole organism is carried into details, and these institutions are the main pillars of freedom, as giving play and scope to the individual will; and the existence of institutions begets in individuals the feeling of patriotism, which recognises that Reason is made living and **[244]** actual in the State, and exerts itself to perform deeds in accordance with the institutions that it admires. Public spirit is based on the confident assurance that our own freedom is rightly carried out; and all the parts of the organism must cohere and be, as it were, identified, as is represented in the old fable of the Stomach and the Members. Behind the organism there is a something in the State which cannot be expressed by predicates.

As to the connexion of the State with religion, we may observe that the presumption of the two being intimately connected is rather at variance with the religious comforts held out to those who groan under a badly governed State. The State is the will of God expressed in the present world, while religion has as its sphere absolute truth approached from the side of feeling. Of course, when religion is confounded with

arbitrary will, guided by feeling, then obviously nothing could be less fit for the management of the State; and sometimes the opposition is directly expressed by the State being termed worldly, and religion being used as a weapon of offence against it. And in education, the two have distinct provinces: Religion has its peculiar doctrines to inculcate; but directly it comes to trench on science, then it enters on the ground appropriated to the State. The State has undoubtedly something lying behind it, something more divine shadowed forth behind the veil; and this something is approached by faith and feeling, but not so that the approach to it can be employed as a practical means of ruling and guiding men.

The political constitution may first be considered as regulating and determining the internal life of the community, and then, as itself, forming a whole contrasted with other wholes, and presenting a front of opposition to, and entering into relations with, other States. The civil power is the expression of the former phase, the military of the latter, the two powers, however, not being disjoined, but each supported by and interlinked with the other. On the side of its internal

organisation we have, first, the legislative power or expression of the Universal; secondly, the administrative power, or the subsumption of different spheres and particular cases under the universal; and lastly, constitutional monarchy, in which the two are united. The selection of constitutional monarchy, as the only true form of government under which a State can attain its perfection, is the most singular and characteristic part of Hegel's theory of a State. We shall see below the reasons on which he bases this dogma. Nothing can be more decided and unflinching than the manner in **[245]** which he promulgates it. He even goes so far as to say that the subject of a history of the world is the advance of States towards constitutional monarchy.

The old division of forms of government into monarchy, aristocracy, and democracy well expressed the ancient world; but now we can only treat these names as historical. They do not correspond to the idea of a State. The principle of the modern world is the freedom of the subjective will; and we may say that all forms are one-sided, which do not further this freedom; and it is because it does further and express this freedom

that so high a value is to be set on constitutional monarchy. Montesquieu says, Virtue is the principle of democracy, Moderation of aristocracy, and Honour of monarchy. But virtue in the heads of the State is not enough; the public at large must be penetrated with that which the commonwealth is to express, and virtue certainly may accompany any form of government. Moderation opens the path to the disposition observable in aristocracies to mix up private interests with public government, and then, as at Rome, an aristocracy becomes an odious tyranny. And the notion of honour being the principle of monarchy is borrowed from feudal times. Privileged persons were then all in all, and duty gave way to honour. The form of government must depend on the approximation the nation has made towards apprehending and embodying the idea of freedom. It is not enough that some few should see what would be a better state of things than the existing one. The mass must be penetrated with a better spirit. Napoleon gave the Spaniards a better constitution than they had, but it seemed quite foreign to them, and had no effect. The question who is to make the constitution?

is always absurd. It presupposes our finding as our material a mere mass of individuals. Really there is always some constitution to be improved. A constitution is not a thing to be made. It is a thing existing which is to be realised.

Setting out, then, with the assumption that a constitutional monarchy is the highest and truest expression of a nation's freedom, we have the power of the prince as the central point of the organism; for it contains within itself, first, the universality of the constitution, secondly, the taking counsel as to the relation of particulars to this universal, and lastly, the expression of personality which it stamps upon the decision to which this counsel leads. It gives ideality and unity to what would otherwise be separate, distinct, disconnected fragments of government. The sovereignty is the last and final decision of the will of the State, and it must be personal. **[246]** Personality is the great feature of modern times; and personality to be represented in a State implies a representative person. We may go a step further. The representative person must be placed at the head of the State by birth, for this is the most natural

way; for an elective monarchy is the worst form of government, as practically most depending on arbitrary choice. But that an hereditary monarchy prevents the growth of faction, is a consequence, not a reason, of its existing. It is in the nature of things that people require a monarch, and nature points to birth as the means by which a monarch is to be secured; and if it is said that this involves a danger, as birth may give us a bad sovereign, we must answer, that nothing should be left to the character of the sovereign: He should merely be the subjective side of positive law; his ministers, not himself, should be responsible for all acts of sovereign authority. Frequently the monarch has nothing to do but to sign his name; but this act is pregnant with meaning; it expresses that he is the head of the State, acting under constitutional law—the head, not the master—himself a part of the State, not like a conqueror, a foreign and overpowering element. “Je ne suis pas votre prince, je suis votre maître,” said Napoleon to the Germans he had crushed; and this exactly expressed the difference between despotism and monarchy.

The administrative power of the State places the prince in connexion with particular details, and includes the sphere of police and also that of law. Individuals must be appointed to carry on the business of the State, but as the proper individuals are not determined by nature, they must be selected according to their capabilities by the prince. The official should find the satisfaction of his private aims in his office. Hence, nothing should be left to his caprice, and at the same time nothing should be tyrannically enjoined on him; but in doing his duty he should be carrying out what his nature requires. The absence of passion and caprice and the presence of good in officials depend partly on the general state of education, and the perfection of the mechanism of the State, partly on the State itself being large enough to prevent private feelings of friendship or enmity influencing the appointment. The sovereign, on the one hand, and corporations, on the other, are the great securities that the appointments will be kept pure.

In the legislative power we have the development of another element besides the monarchical, that, namely, of Ranks. Through the difference of ranks the State

comes into the subjective consciousness of the people, and the people begin to take [247] part in the State. The great object of the existence of ranks is to prevent any member of the body politic being isolated. We must not look on different ranks merely as opposing each other, and speak of the nobility limiting the crown, or the crown the nobility. An opposition may be, and in this case is, a means of union, and one important consequence of the necessity there is for the existence of this means of union, is that States are thus obliged to sanction the institution of inheritance by primogeniture, the purpose of which is to secure representatives on whose presence, unimpeded by the pursuit of gain, the State can always rely. This system keeps up the family as well as the State, and thus acts as a check on the arbitrary caprice of both extremes of the State, the prince, and the individual subject. The ranks also are to supply representatives for the people, each rank sending to a common assembly deputies acquainted with its peculiar wants, and chosen from its number, but chosen for superior knowledge and wisdom, and therefore not to be dictated to by those who chose them; and again, as there are two sides of the

element of ranks, one the preservation of families and the supplying counsellors to the State, and the other maintaining a graduated scale in the community, there ought to be two chambers, to answer to these two functions of ranks. The discussions of the assembly should be in public, in order that the different classes of the community may feel themselves represented. The public is educated by reading and hearing debates, and learns that the affairs of a State are of a different nature from the affairs of a family. Gradually a public opinion is thus formed, and becomes the channel by which the wishes and thoughts of the people are known. The presence of common sense and the influence of an historical past make public opinion valuable, while, on the other hand, its value is lessened by the want of education, and so it is at once good and bad. A great man always sees what is good in the public opinion of his time, and is thus the man of his day; but at the same time he despises the mere casual ebullitions and expressions of this opinion. A free press is the organ through which this opinion chiefly makes itself known, and against the abuses of this press we have as safeguards, the law of

libel, the fact that public debates exhaust much of what is really good in public opinion, and the public contempt which puts down much of the pettiness which carps at superior virtue and ability.

Looking to its outer side, we may say that the State has a certain individuality when it is so realised that it involves a separation from and opposition to all that lies without it. **[248]** The first entrance of a nation into history is the reference of all within it to one head, by which they can be marked out from their neighbours. Through an external existence a nation gains individuality, but individuality implies negation; and negation implies contest, and hence arises war. The circumstances which occasion war are contingent, but under this contingency there is a higher necessity that war should exist in some way or other, for war is the purifier of a State; war tranquillises a State, it unites the different parts of a State, it inculcates self-sacrifices, it detaches us from the love of money and ease. We hear a great deal from the pulpit about the insecurity of worldly goods, and the moral generally drawn is, “then I must take care I don’t lose mine.” A hussar with a drawn sword

is the best preacher in the world. War must come, but it is for the sovereign to decide when it shall come. It is said that cabinets are more reckless than nations; but is it so? Whence came Pitt's popularity, except from advising the nation to engage in a war it longed for?

States are thrown into endless relations with each other, and enter into reciprocal contracts and combinations; but there is no ultimate appeal to regulate the contracts and adjust the quarrels of States. They must fight to settle their differences; and even a combination of States, however large, cannot secure lasting peace. For, as these States differ, probably, in morals, religion, interests, and views, their consent to a union is always liable to be withdrawn. War must come, and if for no other cause, yet as a sphere of external activity. Nor need a State wait for a definite injury; any affront or insult will suffice. A State is supposed to be able to decide what is really for its own advantage. Each State, therefore, judges for itself alone, and makes war and treaties as conducive to its own interests, not to the interests of mankind. A State is not bound by the

morality of an individual; it has as the first principle of action to maintain its concrete existence.

There may, indeed, be said to be one judge on earth which criticises the conduct of nations, one measure of their errors, and one standard of their shortcomings, namely, that spirit which finds its realised existence in the history of the world. For the history of the world is not the abstract and unreasonable necessity of a blind fate, but the setting forth of the universal spirit. In this all-embracing whole are comprehended the manifold forms of national life, and as the individual lives in the State, the State lives in the spirit of the world. The development of this spirit is gradual. Now **[249]** in this place, now in that; first by this nation, and then by that, a step is taken in the onward path. No nation is a great nation which has not a part to play in this great drama; and every nation which has to take a part in it, has a right to take it as against all the world. And when its part has been played, its turn is past. Each nation has, first, a period dating from its birth to its bloom, in which it unfolds its own peculiar principle, and contributes it to the common stock; then it has a period of decay, in which

it admits a foreign principle, loses its inner life, and fades away.

Hitherto there have been four chief forms in which this spirit has manifested itself. The first was that in which the individual was nothing; its seat was the East; the ruler was God, or a high priest; the history was poetry; the legislation was religion; Castes ruled all. Here the life of the State was expended in the first movement; there was no individual energy. Secondly, in Greece the individual was not so much fettered as unconscious; and the whole body was broken up into petty States, resting on a slave population. Thirdly, in Rome we have an abstract universality, and at the same time extreme personality. The end is the Pantheon, and the decay of public and private life, exhausted by civil struggles. Lastly, the spirit thus driven back on itself, found a development in the German nation, which carried out the inner life of the soul, and reconciled truth and freedom with the self-consciousness of the individual. This, however, took place in a nation of barbarians; and so there stood in opposition to it, the intellectual kingdom, in which the truth of the spirit is recognised.

The ultimate stage is the reconciliation of the two. Then freedom, perfectly developed and consciously recognised, at once satisfies all the aspirations of the individual, and exhibits itself in the external form of a completely organised State. Right is made actual. The conception has passed into the idea.

Our summary has carried us to the conclusion of this remarkable work. And here we must stop, for the limits of our space warn us to abstain from criticising the work of which we have traced the outline; and, in any case, the criticism of the details of this book must be unsatisfactory, for the dicta of Hegel rest too much on the weight of his personal opinion to form a fitting subject for critical investigation. They are the reflections of a wise and learned man, and such reflections may often be valuable because they are suggestive; suggestive in many different ways, and of many kinds of truth; but yet may not bear to be sifted and analysed and ranged as true or false. The main subject of the work, the **[250]** relation of reason to experience, and the way in which Hegel conceived that relation, would indeed form an excellent subject for a philosophical disquisition. But

it is an inquiry much beyond our present purpose. The first question we should have to ask would be “What is Hegel’s position in the history of philosophy?” and the reply might fill a volume. Our wish has been simply to call the attention of those who are interested in the studies of jurisprudence and moral philosophy to a work which, if they examine it for themselves, will well repay the hours they spend on it. If through the very imperfect medium of this summary they have traced the presence of a master spirit, much more clearly will he stand revealed to them when they enter on the subject restored to its full proportions, enlivened with countless illustrations here omitted, and clothed in Hegel’s nervous and animated language.

THOMAS COLLETT SANDARS, 1855